

ORDINANCE NO. 8.19

AN ORDINANCE AMENDING CANNABIS REGULATIONS
IN ARTICLE IX, DIVISION 21 OF CHAPTER 36, TO PROHIBIT
STOREFRONT RETAIL CANNABIS BUSINESSES WITHIN THE CITY,
MAINTAIN EXISTING SENSITIVE USE BUFFERS, ESTABLISH A
MINIMUM DISTANCE OF 600' BETWEEN CANNABIS BUSINESSES,
AND ESTABLISH A MAXIMUM NUMBER OF NONSTOREFRONT
CANNABIS BUSINESSES TO THREE IN THE CITY

WHEREAS, Chapter 36 in the Mountain View City Code sets forth a procedure whereby the City can adopt Zoning Text Amendments; and

WHEREAS, said Chapter 36 of the Mountain View City Code requires that both the City's Environmental Planning Commission and City Council hold a duly noticed public hearing before the Zoning Text Amendments are adopted; and

WHEREAS, on April 24, 2019, the Environmental Planning Commission held a duly noticed public hearing and thereafter forwarded its recommendation to the City Council to adopt the Zoning Text Amendments; and

WHEREAS, on May 23, 2019, having given notice as required by Chapter 36 of the Mountain View City Code, the City Council held a public hearing to consider the Zoning Text Amendments;

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Council Findings. The City Council finds and determines, at a duly noticed public hearing on May 23, 2019, that the following Zoning Text Amendments are consistent with the General Plan of the City of Mountain View based upon the following findings made pursuant to Section 36.52.60 of the City Code:

a. The Zoning Text Amendments are consistent with the General Plan because prohibiting storefront retail cannabis businesses in the City and establishing a minimum buffer between cannabis businesses furthers the policy of minimizing conflicts between different land uses (Policy LUD 3.4); and

b. The Zoning Text Amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the City because the adoption of these amendments is consistent with Proposition 64 and State law regarding cannabis; and

c. The Zoning Text Amendments are internally consistent with Chapter 36 of the Mountain View City Code; and

d. The Zoning Text Amendments are exempt from the California Environmental Quality Act (CEQA) per Section 26055(h) of the Business and Professions Code, which states, “Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity”; and

e. The following Zoning Text Amendments are in conformity with the procedures set forth in Chapter 36, Article XVI, Division 13, of the Mountain View City Code whereby the City may amend the City’s Zoning Ordinance.

Section 2. Article IX, Division 21 of Chapter 36 of the Mountain View City Code is hereby amended as follows:

“ARTICLE IX. - STANDARDS FOR SPECIFIC LAND USES

DIVISION 21. - CANNABIS

SEC. 36.30.50. - Personal cannabis use, possession and cultivation.

Personal cannabis use, possession and cultivation are permitted subject to the California Health and Safety Code Sec. 11362, the city code and all applicable state law.

SEC. 36.30.55. - Cannabis businesses.

a. **Required permits.** Cannabis businesses shall not operate without approval of a valid conditional use permit, police department registration and state license.

b. **Maximum number.** A maximum of three (3) cannabis businesses consisting of three (3) nonstorefront retail cannabis businesses shall be allowed within the city at any given time.

c. **No vested rights.** No person(s) shall have any vested rights to any permit, right or interest under this article, regardless of whether such person(s) cultivated, sold, distributed or otherwise engaged in acts related to the use of cannabis prior to adoption of this division.

SEC. 36.30.60. - Cannabis businesses – General provisions.

Cannabis businesses shall be prohibited in all zoning districts except as explicitly permitted in designated zoning districts with approval of a conditional use permit in accordance with Sec. 36.48 of this chapter.

a. **Allowable activity.** Only those types of cannabis businesses explicitly set forth in this section shall be allowed within the city:

1. Cannabis business, nonstorefront retail; and
2. Deliveries from facilities possessing valid state licenses, all required local permits from their respective jurisdiction, and registration pursuant to Chapter 9 of the city code.

b. **Accessory use.** Cannabis businesses shall not be permitted as an accessory use to or in conjunction with any other use.

c. **Proximity to schools, child-care centers, and child-care facilities.** A cannabis business shall not be permitted within six hundred (600) feet of a school (public and private) or two hundred fifty (250) feet of a child-care center or facility. The distance shall be measured in a straight line from the closest property line of the parcel or property containing the cannabis business to the closest property line of the parcel or property containing the school, child-care center or facility. If a cannabis business is separated from a school (public or private) by U.S. Route 101, State Route 85 or State Route 237, or Central Expressway, the permitted distance shall be a minimum of two hundred fifty (250) feet from the school site.

d. **Owner.** An owner or operator of a cannabis business shall be prohibited from owning or operating more than one (1) cannabis business within the city.

e. **Concentration of businesses.**

1. Not more than one (1) cannabis business may be conducted on a parcel or property.

2. A nonstorefront retail cannabis business shall not be permitted within six hundred (600) feet of any other nonstorefront retail cannabis business. The distance shall be measured in a straight line from the closest property line of one (1) parcel or property containing a nonstorefront retail cannabis business to the closest property line of the other parcel or property containing a nonstorefront retail cannabis business.

SEC. 36.30.65. - Cannabis business – General regulations.

All cannabis businesses shall comply with all of the following conditions:

- a. **Deliveries.** Cannabis and cannabis products shall only be delivered to lawful customers and in compliance with the California Business and Professions Code Sec. 26070 and 26090, the city code and all applicable state law.
- b. **Expansion.** A cannabis business shall not be enlarged in size without review and approval of an amendment to the conditional use permit by the zoning administrator.
- c. **Hours of operation.** Cannabis businesses may only occur between the hours of 7:00 a.m. and 10:00 p.m. The zoning administrator may further restrict days and hours of operation of a business as a condition of a conditional use permit.
- d. **Sensitive uses.** The cannabis business shall not adversely impact any existing uses in its vicinity, especially adjacent residential and sensitive uses.
- e. **Noise and odor.** The cannabis business shall not create adverse air quality, noise or odor impacts. The building shall be properly ventilated and the exhaust air filtered to neutralize the odor from cannabis so that the odor cannot be detected by a person with a normal sense of smell at the exterior of the building or on any adjoining property. No operable windows or exhaust vents shall be located on the building facade that abuts a residential use or zone. Exhaust vents on rooftops shall direct exhaust away from residential uses or zones.
- f. **Lighting.** Outdoor lighting shall provide appropriate visibility. All exterior lighting shall be motion-sensored between dusk and dawn and shall not create light pollution on adjacent properties.
- g. **Windows.** Exterior mounted devices are prohibited, including security bars, grates, grills, barricades and similar devices.
- h. **Loading area and circulation.** A secure loading area for transport and delivery of goods shall be provided. All circulation plans for the loading, transport and delivery of goods shall be contained on-site and not cause significant off-site impacts.
- i. **Security.** A security plan compliant with Chapter 9 of the city code shall be provided.

j. **Operation.** Operation of a cannabis business shall not result in illegal redistribution or sale of cannabis, or the use or distribution in any manner which violates state or local regulations.

k. **Transfer of ownership.** A conditional use permit may be transferred to a new owner per Sec. 36.48.30 contingent upon approval of all other required permits, licenses and registration and in compliance with the city code.

l. **State license.** The cannabis business shall, at all times during operation, maintain a valid state license for the use permitted by the approved conditional use permit.

m. **Police department registration.** The cannabis business shall, at all times during operation, maintain valid police department registration for the use permitted by the approved conditional use permit pursuant to Chapter 9 of the city code.

SEC. 36.30.80. - Cannabis business – Nonstorefront retail.

Nonstorefront retail cannabis businesses are allowed with approval of a conditional use permit in designated zoning districts with consideration of the following and all other provisions of the city code:

a. **Display of goods and advertising.** Cannabis and cannabis products shall not be advertised or displayed at the premises. All signage shall comply with Article XII of the zoning code.

b. **Parking.** Nonstorefront retail cannabis businesses shall be considered “warehousing” for purpose of provision of off-street parking and shall comply with Article X of the zoning code or the standards of the applicable precise plan.

c. **Appearance.** The cannabis business shall appear compatible in design to other warehouse uses in the vicinity.

d. **Fences and walls.** Fences and walls are not permitted within the front setback. Fences outside of the front setback shall not exceed seven (7) feet in height and are subject to development review. Defensive materials such as barbed wire are prohibited.

e. **Operation.** At no time shall a customer visit the cannabis business.

SEC. 36.30.85. - Cannabis business – Conditional use permits.

a. Cannabis business use permit application procedures – Initial applications.

1. Cannabis business screening application.

(a) Upon the effective date of this Division, the zoning administrator shall determine the sixty (60) day period during which any person or entity interested in operating a cannabis business pursuant to this article and Chapter 9 of the city code must submit a complete application per the cannabis business screening application checklist to the zoning administrator.

(b) Each application must be submitted by an applicant for a specific business at a specific property.

(c) No applicant, entity or business shall submit more than one (1) application.

(d) No more than one (1) application may be submitted per property or parcel.

(e) Property owners of the application site shall provide written notice of consent for the applicant to submit an application for the cannabis business.

(f) It shall be the applicant's responsibility to provide all the information and materials to complete the cannabis business screening application. The zoning administrator will not consider any incomplete or late applications. The filing date of the cannabis business screening application shall be the date when the zoning administrator receives the last submission of information or materials required by the cannabis business screening application checklist.

(g) The zoning administrator shall review and qualify or deny each application submitted based on the criteria set forth in Sec. 36.30.60, Sec. 9.94 – 9.95 and any other criteria set forth by the zoning administrator.

(h) The zoning administrator shall notify all applicants in writing of his/her determination to qualify or deny their cannabis business screening application. If approved, the applicant may proceed to the application selection lottery.

2. Application selection lottery.

(a) Within sixty (60) days of the cannabis business screening application period, the zoning administrator shall hold a random independent ranking

process (“lottery”) at a noticed and regularly scheduled zoning administrator public hearing.

(b) All eligible applications shall be represented by matching tokens in the lottery. The tokens shall be selected at random. The zoning administrator shall select tokens at random until all tokens have been selected.

(c) Applications shall be placed on the qualified cannabis business list in the order chosen by the lottery.

(d) The zoning administrator shall notify all applicants in writing of their rank on the qualified cannabis business list following the lottery.

3. Planning application.

(a) After the lottery has taken place, the first three (3) applications on the qualified cannabis business list shall be authorized to submit planning applications. The number of applications authorized to be reviewed during any given time period shall not exceed the maximum number of cannabis businesses in subsection 36.30.55.b.

(b) If the three (3) nonstorefront retail cannabis businesses authorized to submit planning applications conflict with the concentration of business criteria, the business ranked higher on the qualified cannabis business list shall be authorized to submit. The second business ranked on the qualified cannabis business list shall not be authorized to submit until the initial application is denied or withdrawn. The first business on the qualified cannabis business list not in conflict with the initial authorized business shall be authorized to submit an application.

(c) Applicants authorized to submit a planning application must submit an application within sixty (60) days of written notification of authorization. The applicant shall submit required information per the cannabis business planning permit submittal checklist.

(d) Where the zoning administrator denies a planning application or an application is withdrawn prior to consideration by the zoning administrator, the next application on the qualified cannabis business list shall be authorized to submit a planning application until such time as all applications have been reviewed or until the maximum number of cannabis businesses have obtained planning permits per subsection 36.30.55.b, whichever occurs first.

(e) The zoning administrator shall review the planning application for compliance with the city code pursuant to the processes and authority established in Article XVI of this chapter.

(f) Planning applications shall be reviewed for compliance with Chapter 9 of the city code.

b. Cannabis business use permit application procedures—Future applications.

1. At the time the zoning administrator is made aware fewer cannabis businesses are operating than the maximum number permitted by subsection 36.30.55.b, the zoning administrator shall determine application periods consistent with subsection 36.30.85.a.

2. If during the cannabis business screening application period, the number of applications received do not exceed that which could be permitted pursuant to subsection 36.30.55.b., an application selection lottery shall not be held and applicants shall be permitted to proceed through the review process.”

Section 3. The provisions of this ordinance shall be effective on July 25, 2019.

Section 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 5. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

The foregoing ordinance was regularly introduced at the Special Meeting of the City Council of the City of Mountain View, duly held on the 23rd day of May 2019, and thereafter adopted at the Regular Meeting of said Council, duly held on the 11th day of June 2019, by the following roll call vote:

AYES: Councilmembers Clark, Hicks, Kamei, McAlister, Ramirez, Vice Mayor Abe-Koga, and Mayor Matichak

NOES: None

ABSENT: None

NOT VOTING: None

ATTEST:

APPROVED:




LISA NATUSCH
CITY CLERK



LISA MATICHAK
MAYOR

Date of Attestation: 6/17/2019

I do hereby certify that the foregoing ordinance was passed and adopted by the City Council of the City of Mountain View at a Regular Meeting held on the 11th day of June 2019, by the foregoing vote, and was published in the *San Jose Post Record* by reference on the 7th day of June 2019, and posted in three prominent places in said City.



City Clerk
City of Mountain View

CB/2/ORD
891-05-23-19o